

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION**

Document Electronically Filed

MDL No. 1:13-md-2419-FDS

THIS DOCUMENT RELATES TO:

Ramos v. New England Compounding Pharmacy, Inc., et al.

Dkt. No. 1:13-cv-10410

Rivera v. New England Compounding Pharmacy, Inc., et al.

Dkt. No. 1:13-cv-10412

**PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO DISMISS PLAINTIFFS'
COMPLAINTS WITH PREJUDICE FOR INSUFFICIENT AFFIDAVITS OF MERIT**

On or about December 5, 2013 and December 9, 2013, respectively, Defendant, Nitesh Bhagat, M.D. filed Motions to Dismiss Plaintiffs' Complaints in the above-captioned matters. Aforesaid Motions should be deemed moot and/or denied without prejudice for the following reasons:

On December 6 and 9, 2013, Plaintiffs filed Short Form Complaints whereupon Defendant, Nitesh Bhagat, M.D. was no longer identified as a Defendant. (See Plaintiffs' Short Form Complaints in the matters of Ramos v. New England Compounding Pharmacy, Inc., et al. and Rivera v. New England Compounding Pharmacy, Inc., et al. collectively attached as Exhibit "A".)

In the alternative, Plaintiffs request that these Motions be denied without prejudice in order to permit Plaintiffs sufficient time to obtain discovery and documentation pertaining to Dr. Bhagat's role and involvement in purchasing the injectable compounds from New England

Compounding Center. The entity where the injectable compounds were administered, Inspira, f/k/a South Jersey Healthcare, has not yet produced any relevant documentation to Plaintiffs' counsel as Inspira has agreed to participate in a private Mediation in an effort to reach an early resolution. It is anticipated that said Mediation will occur within the next six (6) months and documentation will be exchanged in connection with said Mediation. As the Statute of Limitations does not expire until October 4, 2014, Plaintiffs will be prejudiced should Dr. Bhagat's Motions to Dismiss be granted with prejudice prior to Plaintiff's ability to obtain the necessary discovery.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the attached proposed Order should be entered and Defendant, Dr. Nitesh Bhagat, M.D.'s Motion to Dismiss Plaintiff's Complaint be deemed moot and/or, in the alternative, denied without prejudice.

Respectfully Submitted,

SALTZ, MONGELUZZI, BARRETT & BENDESKY

/s/Michael F. Barrett

MICHAEL F. BARRETT, ESQ.

MARY T. GIDARO, ESQ.

Date: December 16, 2013

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Dkt. No. 1:13-cv-10412

ORDER

AND NOW, this day of , 2013 upon consideration of Defendant, Dr. Nitesh Bhagat, M.D.'s Motion to Dismiss and Plaintiff's Response in Opposition thereto, it is hereby ORDERED and DECREED that Defendant, Dr. Nitesh Bhagat, M.D.'s Motion to Dismiss Plaintiff's Complaint is deemed MOOT, due to Plaintiff's filing of a short-form complaint which does not identify Defendant, Nitesh Bhagat, M.D., as a Defendant.

J.

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Dkt. No. 1:13-cv-10412

ALTERNATE ORDER

AND NOW, this day of , 2013 upon consideration of Defendant, Dr. Nitesh Bhagat, M.D.'s Motion to Dismiss and Plaintiff's Response in Opposition thereto, it is hereby ORDERED and DECREED that Defendant, Dr. Nitesh Bhagat, M.D.'s Motion to Dismiss Plaintiff's Complaint is DENIED WITHOUT PREJUDICE.

J.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of the Court on December 16, 2013 using the ECF system that sent notification of this filing to all ECF-registered counsel of record via e-mail generated by the Court's ECF system.

SALTZ, MONGELUZZI, BARRETT & BENDESKY

/s/Michael F. Barrett

MICHAEL F. BARRETT, ESQ.

MARY T. GIDARO, ESQ.

Date: December 16, 2013